IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 1ST MARCH 2007 / 10TH PHALGUNA 1928

Crl.MC.No. 2929 of 2006()

CMP.334/2006 of JUDL.MAGISTRATE OF FIRST CLASS-I, CHERTHALA

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PETITIONER:

A.G.ASHOKAN, S/O.GANGADHARAN,
'DEEPTHI', MAYITHARA P.O., CHERTHALA.

BY ADV. SRI.D.PREM KAMATH
SRI.V.N.SUBHANGAN

RESPONDENTS:

BINOY JOSEPH,
S/O.JOSEPH, KUNNUNGAL HOUSE,
CMC XXIV, CHERTHALA.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 01/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 2929 of 2006

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Dated this the 1st day of March, 2007

O R D E R

The petitioner faces indictment in a prosecution under Section 138 of the N.I. Act. The complaint was filed with a petition to condone the delay of 9 days on 20.1.2006. The same was not supported by a separate affidavit. That defect was of course cured later when the complainant filed an affidavit later on to explain the delay of 9 days. In that affidavit it was stated that the complainant was laid up due to fever during the period from 2.1.06 to 19.1.2006. No medical certificate was produced in support of that affidavit. Later, a medical certificate dt. 25.7.2006 was produced, which shows that the petitioner was undergoing treatment from 31.12.05 to 19.1.2006. He was allegedly suffering from chickenpox infection.

2. The application was stoutly opposed. The learned Magistrate considered the prayer for condonation of delay and by the impugned order, held that the short delay of 9 days can be condoned taking a lenient view.

3. The learned counsel for the petitioner contends that the learned Magistrate had without applying his mind alertly to all circumstances, casually condoned the delay in filing the complaint. The learned counsel further submits that the provisions for condonation of delay in filing the complaint has been incorporated with laudable motives and they could not at any rate be mechanical invocation of the discretion to condone the delay without application of mind. The learned counsel submits that no affidavit was filed along with the petition to condone the delay. Long later the affidavit was filed. The averments in the affidavit were different from the medical certificate, which was later produced in support of the assertions in the affidavit.

4. The respondent has been served. He has not entered appearance. I must say that the affidavit filed later and the medical certificate produced do not tally on all fours. But the learned Magistrate, who was called upon to exercise the discretion in the matter, has taken note of the fact that they do not tally. The learned Magistrate has invoked his discretion in favour of condonation of delay alive to those circumstance.

5. I must alertly remind myself of the nature, quality and contours of the jurisdiction of this Court under Section 482 Cr.P.C. The extra

ordinary inherent jurisdiction can be invoked only when the conscience of the court is satisfied that failure/miscarriage of justice results from the order passed. As the learned Magistrate has noted, the delay is short - only 9 days - and that notwithstanding the innocuous incongruities between the various documents, the fact remains that during the relevant period the complainant is shown to be ill. Though not completely satisfied with the manner in which the affidavit has been filed and the documents produced, I am not satisfied that powers under Section 482 Cr.P.C. deserves to be invoked.

6. This Crl.M.C. is hence dismissed.

(R. BASANT)
Judge

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